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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/519,224	03/06/2000	John C. Yundt-Pacheco	HEMA.69528	7948

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EXAMINER

SUN, XIUQIN

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/519,224

Applicant(s)

YUNDT-PACHECO, JOHN C.

Examiner

Xiuqin Sun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. Specifically, the Abstract of the Disclosure is objected to because it can not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as

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to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.

See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 56-58 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 13, 16, 17, 20, 21, 35, 39 and 40 of copending application No. 10/683,506. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matters claimed in the instant application is disclosed in the copending application and is covered by the copending application since the copending application and the instant application are claiming common subject matters, as follows:

Claims 56-58 in the instant application for a system for normalizing

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groups of laboratory instruments are covered by claims 1, 2, 5, 13, 16, 17, 20, 21, 35, 39 and 40 in the '10/683,506' copending application as shown in Table 1 below.

TABLE 1

#09/519,244 CLAIM	#10/683,506 CLAIM
<p>56. (Previously re-presented)</p> <p>A method for modifying data from a group of laboratory instruments, the method comprising the steps of: obtaining data indicative of testing specimen outputs of the group of laboratory instruments; and normalizing the data according to a control group,</p> <p>wherein said normalizing comprises obtaining control specimen data and generating a normalization curve according to the control specimen data,</p> <p>generating a normalization curve for each laboratory instrument in the group of laboratory instruments, and</p>	<p>1. A method for modifying data from a group of laboratory instruments, the method comprising the steps of: obtaining data indicative of testing specimen outputs of the group of laboratory instruments; and normalizing the data according to a control group.</p> <p>5. The method as recited in claim 1, wherein the normalization step includes obtaining control specimen data and generating a normalization curve according to the control specimen data.</p> <p>13. The method ms recited in claim 5, wherein the normalization step includes generating a normalization curve for each laboratory instrument in the group of laboratory instruments.</p>

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<p><u>displaying the normalized data on a network.</u></p>	<p>2. The method as recited in claim 1, wherein the obtaining step includes receiving the group of laboratory instrument outputs via a network communications link.</p> <p>16. The method as recited in claim 1 further comprising outputting the normalized data.</p> <p>17.</p> <p>wherein the outputting step includes sending the normalized data to the group of laboratory instruments.</p>
<p>57. (Previously re-presented)</p> <p>A method for modifying data from two or more groups of laboratory instruments, the method comprising the steps of:</p> <p>obtaining testing specimen outputs from a first of the two or more groups of laboratory instruments obtaining testing specimen outputs from a second of the two or more groups of laboratory instruments; normalizing the testing specimen outputs from the first and second groups of laboratory instruments; and</p>	<p>20. A method for modifying data from two or more groups of laboratory instruments, the method comprising the steps of:</p> <p>obtaining testing specimen outputs from a first of the two or more groups of laboratory instruments; obtaining testing specimen outputs from a second of the two or more groups of laboratory instruments; and normalizing the testing specimen outputs from the first and second groups of laboratory instruments.</p>

<p>outputting at least one of the normalized first and second group outputs, wherein said outputting comprises</p> <p><u>displaying the normalized outputs on a network.</u></p>	<p>35. The method as recited in claim 20 further comprising outputting at least one of the normalized first and second group outputs.</p> <p>16. The method as recited in claim 1 further comprising outputting the normalized data.</p> <p>17.</p> <p>wherein the outputting step includes sending the normalized data to the group of laboratory instruments.</p> <p>21. The method as recited in claim 20, wherein at least one of the obtaining steps includes receiving data via a network communications link.</p>
<p>58. A system for normalizing groups of laboratory instruments, the system comprising: one or more groups of laboratory instruments; and a normalization server in communication with the groups of laboratory instruments;</p> <p><u>wherein the groups of laboratory instruments comprise a laboratory information system coupled to individual</u></p>	<p>39. A system for normalizing groups of laboratory instruments, the system comprising: one or more groups of laboratory instruments; and a normalization server in communication with the groups of laboratory instruments;</p> <p>40. The system as recited in claim 39, wherein the normalization server and the one or more groups of laboratory instruments communicate via a</p>

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<p><u>laboratory instrument and in communication with the normalization server and</u></p> <p>wherein the groups of laboratory instruments send data indicative of outputs to the normalization system, and wherein the normalization system outputs normalized outputs to the groups of laboratory instruments.</p>	<p>network communications link.</p> <p>39. A system</p> <p>wherein the groups of laboratory instruments send data indicative of outputs to the normalization system and wherein the normalization system outputs normalized outputs to the groups of laboratory instruments.</p>
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This is a provisional obviousness-type double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al. (U.S. Pat. No. 5646046) in view of Lin (U.S. Pat. No. 5532941) and further in view of Hopkins et al. (U.S. Pat. No. 6507765).

Fischer et al. teach a method for modifying data from a group of laboratory instruments (col. 26, lines 56-67; col. 27, lines 1-11), comprising the steps of:

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obtaining data indicative of testing specimen outputs of a laboratory instrument (col. 6, lines 7-9; col. 7, lines 3-32; col. 26, lines 57-67 and col. 27, lines 1-11); and normalizing the data according to a reference (col. 7, lines 3-32; col. 19, lines 59-67; col. 20, lines 61-67; col. 21, lines 1-67; col. 22, lines 1-42; col. 26, lines 57-67 and col. 27, lines 1-12). The teaching of Fischer et al. includes: obtaining control specimen data and generating a normalization curve according to the control specimen data (col. 20, lines 61-67; col. 21, lines 1-67; and col. 22, lines 1-42). The teaching of Fischer et al. further includes: the normalization curve is generated for a single laboratory instrument (col. 5, 57-64; col. 21, lines 32-43; col. 26, lines 66-67), and can further be applied to each instrument in a group of laboratory instruments (col. 26, lines 60-67). The teaching of Fischer et al. further includes outputting the normalized data (col. 3, lines 58-59; and col. 21, lines 36-41).

Fischer et al. do not mention explicitly: obtaining data indicative of testing specimen outputs of a group of laboratory instruments; normalizing the data according to a control group, wherein the control group comprises data indicative of a comparison group of laboratory instruments; the outputting step includes displaying the normalized data on a network; modifying data from more than one group of laboratory instruments.

Lin teaches the steps and means of obtaining data indicative of outputs of a group of lab instruments; and normalizing the data according to a control group, wherein the control group comprises data indicative of a comparison group of laboratory instruments (Figs. 5 and 8A-8C; abstract; col. 2, lines 43-48,

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lines 53-56; col. 3, lines 6-11, lines 40-49, lines 60-63; col. 6, lines 5-28; col. 7, lines 57-67; col. 8, lines 1-67; col. 9, lines 1-34; col. 10, lines 21-67; col. 11, lines 1-12; col. 21, lines 66-67 and col. 22, lines 1-15); the outputting step includes sending the normalized data to the group of laboratory instruments (Fig. 5; col. 5, lines 26-29; col. 23, lines 16-27; and col. 25, lines 13-20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the Lin group data collection, normalization technique and the computer system in the Fischer method in order to reduce the instrument-to-instrument variability in the data obtained from a group of lab instruments to allow comparative data analysis electronically without confusion or loss of confidence (Lin, abstract).

Hopkins et al. disclose a computerized control and information system for a manufacturing system, comprising a plurality of processing machines which generate signals indicative of the parameters of the processing machines' operation (col. 3, lines 11-17). Hopkins et al. teach the steps and means of providing a real-time summary and detailed analysis of received parameter signals, and displaying the summary data on a network including results of statistical analysis performed across said a plurality of processing machines (col. 8, lines 36-67; col. 9, lines 1-15 and lines 29-45).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the Hopkins et al. in the combination of Fischer and Lin in order to provide a network-based distributed computerized

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control and information system for a group of processing machines or laboratory instruments (Hopkins et al., col. 3, lines 11-17 and col. 9, lines 29-45).

Furthermore, in view of the teaching of Fischer et al. (col. 26, lines 56-67; col. 27, lines 1-11; col. 20, lines 20-26; col. 20, lines 61-67; col. 21, lines 1-67; and col. 22, lines 1-42), Lin (Figs. 5 and 8A-8C; abstract; col. 2, lines 43-48, lines 53-56; col. 3, lines 6-11, lines 40-49, lines 60-63; col. 6, lines 5-28; col. 7, lines 57-67; col. 8, lines 1-67; col. 9, lines 1-34; col. 10, lines 21-67; col. 11, lines 1-12; col. 21, lines 66-67 and col. 22, lines 1-15) and Hopkins (col. 3, lines 11-17; col. 8, lines 36-67; col. 9, lines 1-15 and lines 29-45), one having ordinary skill in the art would be able to apply the same technique to carry out the method for modifying instrument results to other groups of laboratory instruments. The mere application of a known method to more than one group of laboratory instruments by those skilled in the art would have been obvious.

7. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Fischer et al.

Lin teaches a system for producing quality control evaluation information for groups of laboratory instruments (see Abstract and Fig.1), comprising: one or more groups of lab instruments (Fig. 1 and col. 5, lines 13-26); and a quality control evaluation server in communication with the groups of lab instruments (Fig. 1), wherein the groups of lab instruments comprise a laboratory information system coupled to individual lab instrument and in communication with the quality control evaluation server and wherein the groups of lab instruments send data indicative of outputs to the quality control evaluation system, and wherein the

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quality control evaluation system outputs quality control evaluation information to the groups of lab instruments (col. 5, lines 13-55).

Lin further teaches implicitly that: said quality control evaluation performed by said quality control evaluation server includes normalizing said groups of lab instruments (Figs. 5 and 8A-8C; abstract; col. 2, lines 43-58, lines 53-56; col. 3, lines 6-11, lines 40-49, lines 60-63; col. 6, lines 5-28; col. 7, lines 57-67; col. 8, lines 1-67; col. 9, lines 1-34; col. 10, lines 21-67; col. 11, lines 1-12; col. 21, lines 66-67 and col. 22, lines 1-15), and said quality control evaluation system outputs normalized outputs to the groups of lab instruments (Fig. 5; col. 5, lines 26-29; col. 23, lines 16-27; and col. 25, lines 13-20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to explicitly include the teaching of Lin normalization in the Lin quality control evaluation in order to more effectively reduce the instrument-to-instrument variability in data obtained from a group of lab instruments to allow comparative data analysis, as suggested by Fischer et al. (Fischer et al., col. 7, lines 15-32 and col. 19, lines 59-67).

Response to Arguments

8. Applicant's arguments filed 10/12/2004 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

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F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, it is deemed that the combined teachings of the three cited prior art references (U.S. Pat. No. 5646046 to Fischer et al., U.S. Pat. No. 5532941 to Lin, and U.S. Pat. No. 6507765 to Hopkins et al.) would have suggested to those of ordinary skill in the art a method for modifying data from one or more groups of laboratory instruments including all the limitations recited in claims 56, 57 and 58, as delineated in section 6 and 7 set forth above in this Office Action.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiuqin Sun whose telephone number is (571)272-2280. The examiner can normally be reached on 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571)272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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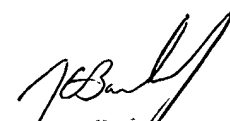
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XS

December 10, 2004

Xiuqin Sun
Examiner
Art Unit 2863



John Barlow
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